

entitled 'Functional constipation,' 'Nervousness,' 'Flatulence,' 'Headaches,' and 'Common colds.' The title of each paragraph is also in heavy black type, and opposite each is a picture of a person shown to be in misery and distress. It is true that the fine print in each of these paragraphs gives the information that Kuriko will bring relief only when the ailment is caused by constipation. We are of the view, however, that this page of the pamphlet alone, considering the form of its arrangement, the ailments which are listed in large type and the limitation with reference thereto in small type, in connection with the pictures of persons evidently in misery and distress, furnishes the basis for a finding that the representations were misleading.

"A great deal of medical testimony was offered by both sides which it is argued supports the contentions of the respective parties. Again we think no useful purpose could be served in an attempt to analyze or dissect this expert testimony as it pertains to the issues in controversy. In fact, to do so would involve a weighing of the testimony, which is not our function but was that of the jury. The only contention made here which might be regarded as serious is that which arises from the submission to the jury of question 4, and its finding that Kuriko is misbranded because the labeling 'fails to bear adequate directions for use in any respect.' Concededly there was no charge in the information to which this question and answer was responsive. The only reason we find for its submission is a statement by the court that it desired an answer to the question for its own information. We are of the view that this question should not have been submitted but, even so, we are also of the view that it was not prejudicial. As this court has held, proof of any one of the claims contained in the information is sufficient. *United States v. Dr. Roberts Veterinary Co.*, 104 F. 2d 785, 789.

"The jury's answer to this question neither adds nor detracts from its answer to the first question, which was responsive to the charge contained in paragraph IIIa. The answer to question 1 forms the basis for a decree and this irrespective of the answer to question 4. This would still be the situation if the jury's answer to question 4 had been 'No.' There is nothing to indicate and no reason to think that the jury's answer to question 4 bore any relation to its answer to question 1. In other words, as far as we are able to discern, the jury's answer to question 1 was not dependent in any manner or to any extent upon its answer to question 4. We therefore are of the view that the submission of question 4 could have had no prejudicial effect.

"The decree is **AFFIRMED.**"

**2474. Misbranding of AlKaPectin. U. S. v. Reserve Research Co. and Herbert Williams Hoyt. Pleas of nolo contendere. Fine of \$125 and costs against defendants jointly. (F. D. C. No. 24276. Sample No. 16222-K.)**

**INFORMATION FILED:** August 13, 1948, Northern District of Ohio, against the Reserve Research Co., a corporation, Cleveland, Ohio, and Herbert Williams Hoyt, president of the corporation.

**ALLEGED SHIPMENT:** On or about October 30, 1947, from the State of Ohio into the State of Michigan.

**PRODUCT:** Analysis disclosed that the product was a white, viscous, homogenized semisolid with a slight aromatic odor and contained chiefly water, kaolin and other aluminum compounds, and a small amount of organic matter.

**NATURE OF CHARGE:** Misbranding, Section 502 (a), the label statement "Indicated in the treatment of Diarrhoea, Duodenitis, Colitis, Diverticulitis, Food Poisoning" was false and misleading, since the article would not be effective in the treatment of diarrhoea, duodenitis, colitis, diverticulitis, and food poisoning.

**DISPOSITION:** October 7, 1948. Pleas of nolo contendere having been entered, the court imposed a fine of \$125 and costs against the defendants jointly.

**2475. Misbranding of Vitawine. U. S. v. Interstate Laboratories, Inc. Plea of guilty. Fine of \$258 and costs. (F. D. C. No. 24043. Sample Nos. 52696-H, 54133-H, 54135-H.)**

**INFORMATION FILED:** March 10, 1948, Western District of Kentucky, against Interstate Laboratories, Inc., Louisville, Ky.

**ALLEGED SHIPMENT:** Between the approximate dates of September 9, 1946, and January 17, 1947, from the State of Kentucky into the State of Indiana.